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NURSING HOMES: INVOLUNTARY TRANSFER

House Bill 5825 as introduced First Analysis (5-25-00)

Sponsor: Rep. Jennifer Faunce
**Committee: Senior Health, Security and
Retirement**

THE APPARENT PROBLEM:

In Michigan, all but about a dozen nursing homes participate in the Medicaid program for low-income individuals. Under current law, if a nursing home decides to withdraw from the Medicaid program, the home must give Medicaid residents 30 days notice prior to nonparticipation. If the resident does not find a new facility to transfer to before the facility becomes decertified and is no longer eligible to accept Medicaid reimbursements, the resident then would become a private pay patient. Though a person who is Medicaid-eligible may have some resources, such as Social Security benefits, more than likely he or she would not have sufficient funds to pay the full fee for staying in the nursing home. Some people are concerned that a nursing home then would force the resident to involuntarily transfer to another facility on the basis of not being able to pay the full fee. For a person of advanced years or frail health, a forced move could be detrimental. The federal Social Security Act specifies that a facility's voluntary withdrawal from Medicaid participation is not an acceptable basis for transferring or discharging a patient for nonpayment if the patient were a resident before the facility ended its participation. However, some feel that similar language should be placed in state laws to ensure that a resident would not be discharged or forced to transfer to another facility against his or her will simply because the facility decided to no longer participate in the Medicaid program.

THE CONTENT OF THE BILL:

The Public Health Code prohibits a nursing home from involuntarily discharging or transferring a patient, except for medical reasons, for the patient's welfare, for the welfare of other patients or facility employees, or for nonpayment (but only as allowed under federal law).

The bill would amend this provision with regard to transfers for nonpayment. Under the bill, a nursing

home that voluntarily withdraws from participation in the Medicaid program, but continues to provide service, could not involuntarily transfer or discharge a patient who resided in the nursing home on the day before the home's withdrawal from the Medicaid program except as allowed under federal law (whether or not the patient was eligible for Medicaid benefits). The prohibition against transfer would remain in effect unless the patient met one of the other listed criteria for an allowable involuntary discharge (medical reasons, etc.).

Title XIX of the federal Social Security Act, Section 1396r, specifies that "the facility's voluntary withdrawal from participation [in the Medicaid program] is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day)".

The bill would further require a nursing home to provide oral and written notice to new patients (after withdrawing from the Medicaid program) that the nursing home does not participate in Medicaid, and that the home could involuntarily transfer or discharge a patient for nonpayment even if the patient were eligible for Medicaid.

MCL 333.21773

FISCAL IMPLICATIONS:

Fiscal information is not available.

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ARGUMENTS:***For:***

Almost all of the state's nursing homes currently participate in the Medicaid program. At least 70 percent of all nursing home residents are Medicaid recipients. In light of many facilities claiming that Medicaid reimbursements are falling short of provided services, there is a concern that some facilities may opt out of participation in the Medicaid program and accept private pay patients only. Once a facility loses its certification for Medicaid, it can no longer receive Medicaid reimbursement from the state, even if it still provides services to Medicaid-eligible persons. Under federal law, opting out of the Medicaid program does not constitute a basis for forcing Medicaid recipients to leave for nonpayment. However, it was felt that similar language should be included in state law.

Against:

The bill really is not needed. Reportedly, no facility in the state that has participated in the Medicaid program has ever withdrawn from the program. Further, since the majority of nursing home residents are Medicaid eligible, it is not foreseen that any facilities would voluntarily end their participation.

Another problem with the bill is that people within the nursing home industry differ on the ramifications of the bill. Some interpret the bill as meaning that a Medicaid recipient could stay forever at a nursing home that withdrew from the Medicaid program, paying only what they were able to (e.g., Social Security benefits, pension plan), with the facility absorbing the shortfall between what the resident could pay and the actual costs of services. If so, any facility that had more than a few Medicaid residents would probably go bankrupt in short order; in which case, the bill would add little protection to Medicaid-eligible nursing home residents. A second interpretation is that a facility could sooner or later evict a Medicaid-eligible resident for nonpayment if the resident could not come up with enough resources to cover the full bill, despite the seeming assurances of proponents that this would not happen.

POSITIONS:

The Health Care Association of Michigan does not oppose the bill. (5-24-00)

The Michigan Association of Homes and Services for the Aging supports the bill. (5-24-00)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.